

Title 16. Respiratory Care Board
Department of Consumer Affairs
[Citation & Fine - Unlicensed Personnel]

FINAL STATEMENT OF REASONS

HEARING DATE: March 28, 2006

SECTIONS AFFECTED:

Sections 1399.391 of the California Code of Regulations, Title 16, Division 13.6, Article 7.

UPDATED INFORMATION:

The Initial Statement of Reasons is included in the file. The information therein has not been modified.

LOCAL MANDATE:

A mandate is not imposed on local agencies or school districts.

SMALL BUSINESS IMPACT:

The impact on small businesses is insignificant. All businesses, including small businesses, are currently responsible for ensuring that their employees who practice respiratory care in this state possess a respiratory care practitioner license in good standing issued pursuant to the Respiratory Care Practice Act. Businesses that continue to unlawfully use unlicensed personnel to provide respiratory care services would be required to cease this illegal practice or face a citation and administrative fine.

CONSIDERATION OF ALTERNATIVES:

No alternative which was considered or that has otherwise been identified and brought to the attention of the board would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

OBJECTIONS OR RECOMMENDATIONS/RESPONSES:

The following comments and recommendations were made regarding the proposed action from Teresa Bello-Jones, Executive Officer, California Board of Vocational Nursing and Psychiatric Technicians:

1. "On March 28, 2006, the Board of Vocational Nursing and Psychiatric Technicians [BVNPT] received notification that the Respiratory Care Board's (RCB) proposed regulatory changes relative to issue a citation and fine for unlicensed activity. March 28, 2006 was also the date of the regulation hearing and the final day for RCB to receive written and oral comments."

Response: This comment is accepted. This is correct.

2. "The [BVNPT] requested placement on RCB's mailing list some time ago and would have submitted timely documentation if RCB's notice had been received."

Response: This comment is rejected. The RCB has reviewed all correspondence (letters and e-mails) it received from the BVNPT over the last 18 months, and has been unable to locate a request to be added to any list. While, the RCB does not show that Ms. Bello-Jones or the BVNPT was on our mailing list in recent years, the RCB does attempt to update its list annually, which requires a response from interested parties in order to remain on the list (reference: Government Code, Section 14911).

On October 24, 2005, the RCB's Executive Officer, as a courtesy, sent agenda materials to Ms. Bello-Jones for an upcoming meeting where the RCB was set to discuss an item related to the BVNPT. While Ms. Bello-Jones did not request the agenda materials, nor did any of her staff, this may have led to some confusion that, because they received these agenda materials, they were on our mailing list.

All meeting and proposed regulatory notices are posted on the RCB's website as required by law.

3. "The [BVNPT] presents the following information and asks that it be considered in relation to RCB's regulatory proposal."

Response: This comment is accepted. On June 9, 2006, the RCB gave consideration to this request and as a courtesy has included all of the BVNPT's comments to be part of the regulatory package.

4. "The Respiratory Care Practice Act (Business and Professions Code, Section 3762) specifies that 'Nothing in this chapter is intended to limit, preclude, or otherwise interfere with the practices of other licensed personnel in carrying out authorized and customary duties and functions.'"

Response: This comment is accepted. Section 3762 of the Business and Professions Code is quoted accurately.

5. "Consequently, the passage of RCB's regulations relative to Section 1399.391 appears to focus on **unlicensed** individuals who engage in the business of a respiratory care practitioner and who are not otherwise exempted from the provisions of the Act."

Response: This comment is accepted. The focus of these regulations is primarily on unlicensed individuals who are practicing respiratory care. However, these regulations, as well as the law providing the authority for these regulations (Sections 3766 and 3767 of the Business and Professions Code), provide that the board may issue a citation against a person or employer of a person who acts in the capacity of, or engages in the business of, a respiratory care practitioner in this State without having a license in good standing pursuant to the Respiratory Care Practice Act. (i.e. Chapter 8.3 of Division 2 of the Business and Professions Code). This may include any licensed person who is practicing respiratory care duties and functions that are not authorized by his/her license. The goal of the regulations is to carry out our mandate to "...protect the public from the unauthorized and unqualified practice of respiratory care..." pursuant to Section 3702 of the Business and

Professions Code.

6. “The [BVNPT]’s Legal Counsel indicates that RCB’s regulatory proposal exempts licensed vocational nurses (LVN) and psychiatric technicians (PT) from these regulations.”

Response: This comment is rejected. The proposed regulations do not “exempt” any person from the proposed regulations themselves. Rather, the regulations allow the RCB to carry out its authority granted to it by the Legislature, to cite and fine any person practicing respiratory care who is not otherwise authorized to do so in accordance with the Respiratory Care Practice Act.

7. “LVNs and PTs who function within their respective scopes of practice are not subject to disciplinary action from RCB.”

Response: This comment is accepted. LVNs and PTs who function within their respective scopes of practice are not subject to disciplinary action from the RCB. In addition, LVNs and PTs who function within their respective scopes of practice are not subject to administrative sanctions (i.e. citation and fine), as proposed by these regulations.

8. “If RCB intends that the proposed regulations will be implemented against LVNs and PTs who function within their legal scopes, the [BVNPT] has serious concerns about the language.”

Response: This comment is accepted. LVNs and PTs who function within their “legal scopes [of practice]” are not the subject of these regulations.

9. “The [BVNPT] requests written confirmation by April 11, 2006, identifying the intent of the RCB regulations with respect to the practice of LVNs and PTs.”

Response: This comment is rejected. At the time this correspondence was received, the RCB’s next meeting was not scheduled until June 9th, at which time the RCB was scheduled to review and respond to all comments on the regulatory proposal. In addition, the RCB would consider whether this comment that was received after the closing date, would be accepted as a courtesy to the BVNPT. However, the RCB acknowledged receipt of their letter.

As described in the specific language, these regulations allow the RCB to carry out its authority granted to it by the Legislature, to cite and fine any person practicing respiratory care who is not otherwise authorized to do so in accordance with the Respiratory Care Practice Act.

10. “The [BVNPT] also asks again that it be placed on RCB’s mailing list.”

Response: This comment is accepted. On April 4th, Ms. Teresa Bello-Jones was added to the RCB’s agenda and regulatory mailing lists.